



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Washington, D.C. 20460

OFFICE OF
GENERAL COUNSEL

October 19, 2021

Dr. David L. Hargett

Ex. 6 Personal Privacy (PP)

**Re: Freedom of Information Act Request – EPA-R4-2022-000096
Fee Waiver Determination**

Dear Dr. Hargett:

This letter concerns the above-referenced Freedom of Information Act (FOIA) request, received by the U.S. Environmental Protection Agency (EPA), National FOIA Office (NFO) on October 5, 2021, in which you are seeking: “all information in the records of EPA-Region IV regarding the Lake Conestee Site located in Greenville, SC, since October 1, 2018. The site ID is: Lake Conestee EPA ID: SCN00407298. I request all documents, reports, analysis, records, and correspondence and communication records with state and other agencies, and other interested parties regarding the PA/SI process conducted by EPA under its CERCLA authority from January 1, 2018 to present.”

EPA has received your request for a fee waiver. Your request for a fee waiver was evaluated based upon the information you provided in support of your request for a fee waiver and EPA regulations concerning requests for a fee waiver. After thoroughly reviewing your letter and request for fee waiver, I have determined that you have not presented sufficient evidence for a waiver of applicable fees.

EPA regulations provide a mechanism for requesters to seek records responsive to a FOIA request “without charge or at a charge reduced below” the agency FOIA fee schedule when the NFO determines “based on all available information, that disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government” (public interest requirement) and “is not primarily in the commercial interest of the requester” (non-commercial interest requirement). 40 C.F.R. § 2.107(l)(1).

To evaluate the public interest requirement, the EPA considers each of four factors: (1) the subject of the request; (2) the informative value of the information to be disclosed; (3) the contribution to an understanding of the subject by the public is likely to result from disclosure; and (4) the significance of the contribution to public understanding. 40 C.F.R. §§ 2.107(l)(2)(i)-

(iv).

To determine the non-commercial interest requirement, the EPA considers each of two factors: (1) the existence and magnitude of a commercial interest; and (2) the requester's primary interest in the information disclosure. 40 C.F.R. §§ 2.107(l)(3)(i)-(ii). If the EPA determines the requester has a commercial interest that is furthered by disclosure of the requested information and the commercial interest is primary to any specified public interest, the requester is not entitled to a waiver of fees.

Fee waiver requests must specifically address each, and all, of the factors. *See* 40 C.F.R. § 2.107(l)(5). If a requester's written justification for a fee waiver fails to address or substantiate each of the factors discussed below, the EPA will deny the request for a fee waiver. *Id.* The NFO evaluated the information you provided in support of your request for a fee waiver and applicable EPA regulations.

In support of your request for a fee waiver, you provided the following justification:

The subject site is a Nature Preserve accessible to the public. This site has confirmed contamination issues that affect the use of the safety of the site by public patrons, and school children. The Requestor is the founder of the non-profit organization that manages the nature preserve, and has been the continuous primary technical advisor to the organization for over two decades. The requestor is the party who originally petitioned EPA for performance of the PA/SI process recently completed by the agency. This petition followed a Dec 2018 meeting with the Region Administrator and the Director of Superfund, EPA-R4. The Requestor provided extensive background information to EPA and allied staff to include historical data relevant to the PA/SI process. I have had dozens of meetings and communications with EPA and its partner agencies on these matters. The Requestor also facilitated the fieldwork conducted as a part of the SI. The Requestor serves as a trusted advisor to a multitude of local entities that rely on my advice and recommendations for their decisions regarding the Site and their related interests. Parties that have relied on my advice and direction on these issues include the following: City of Greenville, SC (elected officials and various departments); Greenville County Council (elected officials and various departments); Renewable Water Resources (local wastewater authority); Reedy River Water Quality Group (inter-agency consortium); Upstate Forever (regional smart growth policy and land trust non-profit); Friends of Reedy River (local river advocacy NPO); Greenville County Soil & Water Conservation District; Save Our Saluda (watershed advocacy NPO); Laurens County Council; Laurens County Water & Sewer Commission; Greenwood County Council; Greenwood County Commission of Public Works; Preserving Lake Greenwood (local water quality NPO); Natural and Trust (local land trust NPO); SC Department of Natural Resources (environmental programs office); Greenville County Legislative Delegation (members of State General Assembly); SC Congressional Delegation (Sen. Graham, Sen. Scott, and Cong. Timmons); US Army Corps of Engineers (local environmental programs office); Local Environmental Justice Organizations; South Carolina Senior Conservation Leadership Alliance (SCLA-Requestor is a Member); Local Emergency Responders;

Local Land Owners Potentially Affected by the Site; Local Development and Business Interests Potentially Affected by the Site; Local Recreational Interests who utilize the Site; and the upstream and downstream Reedy River. Over the past 22 years I have been the principal point of contact, and the principal investigator on contamination and dam safety issues related to the Site prior to the current PA/SI. Throughout the PA/SI process I have been an advisor and consultant to EPA on the relevant history of the Site, key concerns regarding the Site, relevant Site management activities, and strategies for long-term Site care. I continue to advise all of these parties, as none of them have the institutional knowledge of the Site that I possess, or the technical capacity to provide insights to the results of this PA/SI process. Over the last three years especially, (and over the past 22 years), and throughout the course of this PA/SI process, I have had dozens of meetings with all of the above entities to, include all of the elected officials listed above, to brief them on the Site, the PA/SI process, and critical actions necessary to protect public safety, public interests, and to protect the environment. The Requestor also serves as a critical source of information for local media regarding the Site. The information requested here is essential to maintaining continuity of critical information to all of the above organizations and individuals that rely on the Requestor as a source of concise and timely information regarding conditions at the Site, safe use of the Site, and protection of the associated environment. This information is critical to maintaining the public's understanding of the nature of this Site, which EPA has previously communicated is a "large, complex, and serious site, that will require perpetual care." This Site is used by hundreds of thousands of Preserve patrons each year. These patrons must have accurate and timely information on any changes in conditions and restrictions to sustain their safe use. The Site is also a state-sanctioned Wildlife Sanctuary. Any changes in status or conditions must be timely advised to the public. Downstream of the Site, the Reedy River provides public water supply to two counties, Laurens and Greenwood, and their municipalities. Timely provision of related information is critical to the operations of these counties' water supply systems. Major development and business interests surround the Site and are dependent on timely and accurate information, carefully interpreted, for their sound business decisions. The Requestor fully intends to openly share the requested information through ongoing liaison with the above listed organizations and individuals, and others.

Your fee waiver justification fails to provide any specific reasoning to demonstrate *why* the disclosure is not primarily for a commercial interest. Based on the information you provided, we concluded that your commercial interest is primary to any specified public interest. For these reasons, your request for a fee waiver is denied.

You may appeal this determination by email at hq.foia@epa.gov, or by mail to the EPA's National FOIA Office, U.S. EPA, 1200 Pennsylvania Avenue, N.W. (2310A), Washington, DC 20460 or through FOIAonline if you are an account holder. If you are submitting your appeal by hand delivery, courier service, or overnight delivery, you must address your correspondence to 1200 Pennsylvania Avenue, N.W., WJC-N Building, Room 7309C, Washington, DC 20460.

Your appeal must be in writing, and it must be received no later than 90 calendar days from the date of this letter. The Agency will not consider appeals received after the 90-calendar-day limit. Appeals received after 5:00 p.m. EST will be considered received the next business day. The appeal letter should include the FOIA tracking number listed above. For quickest possible handling, the subject line of your email, the appeal letter, and its envelope, if applicable, should be marked "Freedom of Information Act Appeal."

Your fee waiver request is denied because you did not address with enough detail the factors described above, under EPA's FOIA Regulations, located at 40 C.F.R. § 2.107(l). Because your fee waiver request did not provide enough detail on the non-commercial interest factors, the National FOIA Office did not make a determination on the sufficiency of your request with respect to the other factors. Should you choose to appeal this determination, please be sure to provide information to address all six factors required by EPA's FOIA Regulations in your appeal. For more information about the FOIA fee waiver factors, please visit our website at: <https://www.epa.gov/foia/requesting-foia-fee-waivers>.

If you need any further assistance or would like to discuss any aspect of your request, you may seek assistance from EPA's FOIA Public Liaison at hq.foia@epa.gov or call (202) 566-1667. You may also seek assistance from the Office of Government Information Services (OGIS). You may contact OGIS in any of the following ways: by mail, Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740-6001; email: ogis@nara.gov; telephone: (202) 741-5770 or (877) 684-6448; or fax: (202) 741-5769.

Sincerely,



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HILL
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Kevin W. Hill
Attorney-Adviser
National FOIA Office